

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB327

Hearing Date: Monday February 02, 2009
Committee On: Banking, Commerce and Insurance
Introducer: Pahls
One Liner: Change Department of Banking provisions

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 8 Senators Christensen, Gloor, Langemeier, McCoy, Pahls, Pankonin,
Pirsch, Utter
Nay:
Absent:
Present Not Voting:

Proponents:	Representing:
Senator Rich Pahls	Introducer
Director John Munn	NE Department of Banking and Finance
William Mueller	The Money Services Round Table
Brandon Luetkenhaus	NE Credit Union League
Robert Hallstrom	NE Bankers Association
Kurt Yost	NE Independent Bankers

Opponents:	Representing:
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Neutral:	Representing:
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Summary of purpose and/or changes:

LB 327 (Pahls), introduced at the request of the Director of Banking and Finance, would amend various sections regarding banking and finance. The bill would provide, section by section, as follows:

BANKS

Section 1 would amend section 8-101.01 of the Nebraska Banking Act to provide that new section 2 of the bill shall be assigned within the act.

Section 2 would enact a new section in the Nebraska Banking Act to provide that state-chartered banks which hold fiduciary accounts shall pledge collateral to secure amounts in those accounts which exceed the insurance or guaranty coverage provided by the Federal Deposit Insurance Corporation. Subsection (1) would state the authority to hold such accounts; subsection (2) would require the collateral pledge; subsection (3) would provide for acceptable types of collateral; subsection (4) would provide for deposits with affiliates of the bank and the authority of the depositing bank to collateralize those deposits; and subsection (5) would exempt public funds deposits from the requirements of this section, as those funds are subject to collateral requirements under other statutes. This section tracks federal law, 12 CFR 9.10(b).

Section 3 would amend section 8-112 of the Nebraska Banking Act to provide that examination reports, investigation

reports, and documents and information relating to such reports remain confidential records of the Department of Banking and Finance even if such reports or documents and information are transmitted to a financial institution or other entity regulated by the department which is the subject of such reports or documents and information, and may not be otherwise released or disclosed by any such financial institution or other entity regulated by the department. These amendments would further provide that these restrictions shall also apply to any representative or agent of the financial institution or other entity regulated by the department.

Section 4 would amend section 8-163 of the Nebraska Banking Act to provide that the Director of Banking and Finance shall have the authority to allow a state-chartered bank to pay dividends even though it previously had losses that equaled or exceeded the undivided profits on hand. The law currently provides that banks cannot pay dividends under these circumstances. These amendments would address situations where the bank improves its financial condition.

Section 5 would amend section 8-1,140 of the Nebraska Banking Act, which is the "wild-card statute for state-chartered banks. This section would be amended to give state-chartered banks the same rights, powers, privileges, benefits, and immunities which may be exercised by a federally chartered bank doing business in Nebraska as of the effective date of this section. This section would be amended to give state-chartered banks the same rights, powers, privileges, benefits, and immunities which may be exercised by a federally chartered bank doing business in Nebraska as of the effective date of this section. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

TRUST COMPANIES

Section 6 would amend section 8-209 of the Nebraska Trust Company Act to change the amount of pledged securities that trust companies and trust companies of banks must pledge with the Department of Banking and Finance. This section currently provides that these institutions must maintain a pledge of \$100,000 in par value of approved securities. New subsection (2) of this section would provide a sliding scale pursuant to which the amount of securities to be pledged would be based on the market value of trust assets held by the institution. Trust companies with trust assets with a market value of less than \$25,000,000 shall pledge securities of \$100,000 in par value. Trust companies with trust assets with a market value of at least \$25,000,000 but less than 250,000,000 shall pledge securities of \$200,000 in par value. Trust companies with trust assets with a market value of at least \$250,000,000 but less than \$2,500,000,000 shall pledge securities of \$300,000 in par value. Trust companies with trust assets with a market value of at least \$2,500,000,000 but less than \$5,000,000,000 shall pledge securities of \$400,000 in par value. Trust companies with trust assets with a market value of \$5,000,000,000 or more shall pledge securities of \$500,000 in par value. New subsection (3) of this section would require a trust company to determine the market value of its trust assets at the end of each calendar quarter, and, if the current pledge of securities is less than what is required by this section, increase the amount of the pledge within fifteen days following the end of the calendar quarter.

Section 7 would amend section 8-210 of the Nebraska Trust Company Act to clarify provisions regarding the requirements to pledge securities pursuant to section 8-209.

BUILDING AND LOAN ASSOCIATIONS

Section 8 would amend section 8-355, which is the "wild-card" statute for state-chartered building and loan associations. This section would be amended to give state-chartered building and loan associations the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal savings and loan association doing business in Nebraska as of the effective date of this section. Due to state constitutional restrictions on delegation of legislative authority, this statute is amended annually.

FEES

Section 9 would amend section 8-602 of the Department of Banking and Finance assessments and fees statutes by repealing subdivision (6), which provides for a one dollar and fifty cents per page charge for copying documents. With this repeal, copying charges would be governed by section 84-712(3)(b), which provides that copying charges for public records shall be the actual cost of making copies available.

SALE OF CHECKS AND FUNDS TRANSMISSION

Section 10 would amend section 8-1001 of the Nebraska Sale of Checks and Funds Transmission Act to provide a definition of "control" for purposes of the act: the power, directly or indirectly, to direct the management or policies of a licensee, whether through ownership of securities, by contract, or otherwise.

Section 11 would amend section 8-1001.01 to provide that new section 12 of the bill shall be assigned within the act.

Section 12 would enact a new section in the Nebraska Sale of Checks and Funds Transmission Act. Subsection (1) would provide that no person acting personally or as an agent shall acquire control of a licensee without first giving thirty days' notice to the Director of Banking and Finance. Subsection (2) would provide that the director shall act upon a notice of acquisition within 30 days and, unless he or she disapproves within that period, the acquisition becomes effective on the thirty-first day, without the director's approval, except that the director may extend the period an additional thirty days. Subsection (3) would provide that an acquisition may be made within the disapproval period if the director issues written notice of his or her intent not to disapprove. Subdivision (4)(a) would provide grounds for disapproval. Subdivision (4)(b) would provide that the director shall notify the acquiring person in writing of disapproval. Subdivision (4)(c) would provide that, within fifteen business days after receipt of a written notice of disapproval, the acquiring person may request a hearing, and that, after the hearing, the director shall issue an order on the basis of the record at the hearing.

CREDIT UNIONS

Section 13 would amend section 21-17,115 of the Credit Union Act, which is the "wild-card" statute for state-chartered credit unions. This section would be amended to give state-chartered credit unions the same rights, powers, privileges, benefits, and immunities which may be exercised by a federal credit union doing business in Nebraska as of the effective date of this section. Due to state constitutional restrictions on delegation of legislative authority, this section is amended annually.

LOAN BROKERS

Section 14 would amend section 45-190 of the loan broker statutes to narrow the definition of "loan broker" so that it means a person, not otherwise excepted, who, among other things, procures or arranges a loan or assists in making an application for a loan for or in expectation of "an advance fee from a borrower" rather than for or in expectation of "consideration." The definition currently includes a person who receives a fee from any source, including a lender.

INSTALLMENT SALES

Sections 15 and 16 would amend sections 45-346.01 and 45-348 of the Nebraska Installment Sales Act to provide that, on or before each October 1, an installment sales licensee shall submit to the Director of Banking and Finance information to indicate any material change in the information contained in the original license application or succeeding renewal applications, including a copy of the licensee's most recent annual CPA audit. These sections would provide that a licensee shall submit a copy of the annual audit to the director upon written request of the director. Currently, a licensee is required to submit a copy of the annual CPA audit to the director within forty-five days after the audit is completed.

DELAYED DEPOSIT SERVICES

Section 17 would amend section 45-922 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance may suspend or revoke a delayed deposit services license if the licensee has abandoned its place of business for "thirty" days or more rather than "sixty" days or more.

MISCELLANEOUS PROVISIONS

Section 18 would provide for operative dates.

Section 19 would provide for repealers of sections not subject to the emergency clause.

Section 20 would provide for repealers of sections subject to the emergency clause.

Section 21 would provide for the emergency clause.

The bill carries the emergency clause.

Explanation of amendments:

The committee amendments would change the bill's proposed amendments in section 8-1001 of the Nebraska Sale of Checks and Funds Transmission Act and would insert a new section in that act:

1. In section 10 of the bill, the committee amendments would amend the proposed definition of "control" in section 8-1001 of the Nebraska Sale of Checks and Funds Transmission Act to provide that a person who, among other things, "has the power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or any person in control of a licensee" (instead of "is a director, a general partner, or an executive officer, including the president, chief executive officer, chief financial officer, chief operating officer, chief legal officer, chief compliance officer, and any individual with similar status or function") is presumed to control that licensee. This change would tighten up who would be required to give notice of acquisition of a licensee to the Director of Banking and Finance under new section 12 of the bill.

2. The committee amendments would insert a new section 13 in the Sale of Checks and Funds Transmission Act:

First, the new section would provide that a licensee shall file a notice with the Director of Banking and Finance within thirty calendar days of any material change in the information provided in a licensee's license application.

Second, the new section would provide that a licensee shall file a report with the director within five business days after the licensee has reason to know of (a) the filing of a bankruptcy petition by or against the licensee, (b) the filing of a receivership petition by or against the licensee, the commencement of dissolution or reorganization proceedings, or the making of a general assignment for the benefit of creditors, (c) the commencement of license revocation or suspension proceedings in another jurisdiction, (d) the cancellation or impairment of the licensee's bond, (e) a charge or conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony, or (f) a charge or conviction of an authorized agent for a felony.

Rich Pahls, Chairperson